

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WESCO INSURANCE COMPANY,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 1:23-cv-9017
vs.	:	
UNITED STATES LIABILITY INSURANCE	:	
COMPANY,	:	<u>NOTICE OF REMOVAL</u>
Defendant.	:	
	:	

TO: Clerk of the Court
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007-1312

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, Defendant United States Liability Insurance Company (“USLI”) hereby removes this action from the Supreme Court of the State of New York, County of New York, where this action is currently pending, and respectfully states as follows:

1. On or about September 11, 2023, Plaintiff Wesco Insurance Company (“Wesco”) commenced this action by filing a Summons and Complaint against USLI in the Supreme Court of the State of New York, County of New York, under Index No. 654407/2023. Attached here as Exhibit A is a true copy of a letter, dated September 21, 2023, from the New York Department of Financial Services (“DFS”) to USLI, enclosing the Summons and Complaint.

2. As set forth in its September 21, 2023 letter, the DFS acknowledged that it received service of the Summons and Complaint on September 15, 2023. *See Ex. A.*

3. As indicated by the date stamp on the DFS's September 21, 2023 letter, USLI received a copy of the Summons and Complaint from the DFS on September 28, 2023. *See Ex. A.*

4. Upon information and belief, Wesco is a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business in Cleveland, Ohio. Attached hereto as Exhibit B is a true copy of a printout of information maintained on the DFS website regarding Wesco.

5. USLI is a corporation duly organized and existing under the laws of the State of Nebraska with its principal place of business in Wayne, Pennsylvania.

6. Upon information and belief, diversity of jurisdiction existed at the commencement of this case and continues to exist on the date of the filing of this Notice.

7. Wesco insures Father Realty Corp. ("Father"). *See Ex. A, Complaint at ¶ 9.*

8. USLI insures Chelsea 7 Corporation d/b/a Sexy Boutique ("Chelsea"). *See Ex. A, Complaint at ¶ 7.*

9. SJWA LLC and Susan Haar have brought suit against Father and Chelsea, seeking to recover damages from Father and Chelsea for property damage that allegedly occurred at the premises owned by SJWA LLC. That action, captioned *SJWA LLC, et al. v. Father Realty Corp., et al.*, is pending in the Supreme Court of the State of New York, County of New York, under Index No. 152033/2019 (the "Underlying Action"). *See Ex. A, Complaint at ¶¶ 5-6.*

10. In its Complaint, Wesco seeks a declaration that USLI must indemnify Father as an additional insured under the policy issued by USLI to Chelsea against the damage claims asserted by SJWA LLC and Susan Haar in the Underlying Action. *See Ex. A, Complaint at ¶¶ 8-15.*

11. Pursuant to their Verified Complaint filed in the Underlying Action, SJWA LLC and Susan Haar alleged that they were entitled to recover the following damages from Father and Chelsea:

- (a) \$500,000 for Trespass (First Cause of Action);
- (b) \$1,000,000 for Private Nuisance (Second Cause of Action); and
- (c) \$500,000 for Negligence (Third Cause of Action).

Attached hereto as Exhibit C is a true copy of the Summons and Verified Complaint filed on behalf of SJWA LLC and Susan Haar in the Underlying Action on February 26, 2019.

12. On July 14, 2022, by Decision + Order on Motion, the court in the Underlying Action granted summary judgment to SJWA LLC and Susan Haar on their causes of action for trespass and private nuisance against Father and Chelsea. Further, the court ruled that SJWA LLC and Susan Haar's claim for compensatory damages based on lost market value would be determined at trial at which they would be entitled to introduce testimony from their expert that their damages amount to \$1,800,000. Attached hereto as Exhibit D is a true copy of the Decision + Order on Motion filed in the Underlying Action on July 14, 2022.

13. Based on the dollar amount of compensatory damages claimed by SJWA LLC and Susan Haar in the Underlying Action – as evidenced by their Verified Complaint and the Decision + Order on Motion – and Wesco's demand in its Complaint in this case for a declaration that USLI must indemnify Father against any damage award entered against Father in the Underlying Action, the amount in controversy in this case is in excess of \$75,000, exclusive of interest and costs. *See, e.g., Mt. Hawley Ins. Co. v. Pioneer Creek B LLC*, 2021 U.S. Dist. LEXIS 184501 at *8-9 (S.D.N.Y. Sept. 27, 2021) (“When a plaintiff seeks declaratory relief, it is well established that the amount in controversy is measured by the value of the object of the litigation” or the value of the underlying claim).

14. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332, and the action is removable to this Court pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

15. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is being filed within the 30-day time limit for removal.

16. As alleged in the Complaint, the property that is the subject matter of this action is located at 304 West 18th Street, New York, New York. *See Ex. A, Complaint at ¶ 6.*

17. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this District because this action is currently pending in the Supreme Court of the State of New York, County of New York, a substantial part of the events or omissions allegedly giving rise to the claim occurred in this District, and the property that is the subject matter of this action is located in this District.

18. Pursuant to 28 U.S.C. § 1446(d), USLI will file a Notice of Filing of Notice of Removal with the Supreme Court of the State of New York, County of New York.

Dated: October 13, 2023

SAIBER LLC
132 W. 31st Street, 9th Floor
New York, New York 10001
Tel. 332-456-0200
Attorneys for Defendant
United States Liability Insurance Company

By: /s/Vincent J. Proto
VINCENT J. PROTO

CERTIFICATE OF SERVICE

The undersigned certifies that, on October 13, 2023, I electronically filed the foregoing Notice of Removal and accompanying exhibits with the Clerk of the Court using the CM/ECF system. I further certify that I caused a copy of the foregoing to be served upon Plaintiff's counsel, Max W. Gershweir, Esq., GUNNERCOOKE US LLP, 1 Rockefeller Plaza – 10th Floor, New York, New York 10020, by Federal Express and electronic mail.

/s/Vincent J. Proto
Vincent J. Proto